IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.224 OF 1998

M/s.Chicago Pnematic India Ltd. ...Plaintiffs

vs.

M/s.Firth (India) Steel
Company Limited and Anr. ...Defendants

Ms A.Shareefamal for the Plaintiffs
None for the Defendant

CORAM: A.S.OKA,J.
DATE : OCTOBER 23,2007

P.C.:

1. The plaintiffs have filed this suit for recovery of a sum of Rs.76,587/- against the second defendant as prayed in prayer clause (a). The plaintiffs have also prayed for further interest at the rate of 18% p.a.

2. According to the case of the plaintiffs, in April 1996 they placed an order with the first defendant for purchase of steel bars and paid an advance of Rs.44,557/-. As per the terms and conditions of the purchase order the first defendant was to deliver the steel bars by September 1996. According to the case of the plaintiffs, the first defendant accepted the purchase order by their sale order dated 31st May 1996. According to the case of the plaintiffs, the first defendant failed and neglected to comply with their commitment. Reliance has been placed on various communications issued by

the plaintiffs to the first defendant. As the first defendant did not respond, the plaintiffs were compelled to cancel the purchase order on 22nd January 1997. By a letter dated 22nd January 1997, the plaintiffs communicated the cancellation of order to the first defendant and called upon the first defendant to refund a sum of Rs.44,557/-. As there was no response from the first defendant, notice dated 30th April 1997 was issued. As there was no response from the first defendant to the notice, the present suit has been filed.

3. The first defendant-company was ordered to be wound up and an Official Liquidator has been appointed as provisional liquidator. By order dated 14th June 2006 in Chamber Summons No.1591 of 2005, the plaintiffs were allowed to implead the Official Liquidator as the second defendant and were also allowed to carry out the consequential amendment. Thereafter, the written statement has been filed by the Official Liquidator denying the averments made in the plaint. On 29th August 2007 following issues were framed :

(1) Whether the suit is maintainable in law in the light of the orders dated 23rd October 1997 and 15th March 1999 passed by this court in Company Petition No.457 of 1997?

(2) Whether the plaintiffs prove that in April 1996 they placed an order with the 1st Defendant for purchase of

steel bars vide purchase order datd 8th April 1996 ?

(3) Whether the plaintiffs prove tht they had paid an advance amount of Rs.44,557/- to the 1st Defendant as per the aforesaid purchase order ?

(4) Whether the plaintiffs prove that the 1st Defendant accepted the said purchase order vide their sale order dated 31st May 1996 ?

(5) Whether the plaintiffs prove that the 1st Defendant failed and neglected to supply the goods as per the purchase order/sale orde ?

(6) Whether the plaintiffs prove that they have suffered loss to the tune of Rs.20,000/- in their business on account of the failure of the 1st Defendant to supply the material ?

(7) Whether the plaintiffs are entitled to a decree in the sum of Rs.76,587/- with interest as prayed ?

(8) What order and decree?

4. The plaintiffs examined Mr.Anand C. Daga its Company Secretary by filing his Affidavit in lieu of examination in chief. His examination in chief was recorded in the court on

4th October 2007. As none appeared for the defendants, the cross examination was treated as closed. The plaintiffs made statement that they did not desire to examine any other witness and accordingly the suit was set down for recording of evidence of the second defendant and for arguments. Today, none appears for the second defendant. Hence, I have heard the submissions of the counsel for the plaintiffs.

5. I have perused the Affidavit in lieu of examination in chief of Mr.Anand Daga. In view of the averments made in paragraph 2 of the said affidavit, the plaintiffs are entitled to lead secondary evidence of the documents at Sr.No.1 to 7 in the list of documents produced by the plaintiffs. The said documents have been duly proved by the evidence of the said witness. The document at Item No.8 is the office copy of notice dated 30th April 1997 which has been duly proved in evidence.

6. The documents on record proved the fact that the order was placed by the plaintiffs with the first defendant for supply of steel bars and the said order was accepted. The evidence of the said witness and the documents on record proved the fact that an advance of Rs.44,557/- was paid by the plaintiffs to the first defendant. There is no challenge to the evidence of the witness examined by the plaintiffs. Therefore, a case made out by the plaintiffs of payment of advance and failure

of the first defendant to refund the said amount will have to be accepted. In the statement of claim, the plaintiffs have claimed interest at the rate of 18% p.a. from March 1996 till the date of filing of the suit. Demand of interest at the rate of 18% p.a. was made by notice dated 13th February 1997. The plaintiffs have prayed for further interest at the rate of 18% p.a. Considering the facts and circumstances of case and the fact that the defendant company is under liquidation, interest will have to be awarded at the rate of 6% p.a.

7. The plaintiffs have claimed damages of Rs.20,000/- on account of alleged loss sustained by them. In the affidavit in lieu of examination in chief, the said claim has not been substantiated and therefore, the claim for damages cannot be allowed. The issues are answered accordingly.

8. Hence I pass the following order :

. The defendants are ordered and decreed to pay a sum of Rs.56,587/- together with interest at the rate of 6% p.a. on a sum of Rs.44,457/- from the date of institution of the suit till realization. The plaintiffs will be entitled to proportionate costs of the suit. Certified copy is expedited.

JUDGE